

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ALFRED SINCLAIR,

Plaintiff,

Case No. 04-70670

v.

District Judge Gerald E. Rosen  
Magistrate Judge R. Steven Whalen

CITY OF BIRMINGHAM, et al.,

Defendant.

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**OPINION AND ORDER DENYING MOTION TO AMEND COMPLAINT**

Before the Court is Plaintiff's Motion to Amend Complaint [Docket #26]. Plaintiff seeks to add a count of conspiracy under 42 U.S.C. §1985.

Despite the general rule of liberality with which leave to file amended complaints is to be granted, *see* Fed.R.Civ.P. 15(a), the Sixth Circuit has held that when a proposed amended complaint would not survive a motion to dismiss, the court may properly deny the amendment. *Neighborhood Development Corp. v. Advisory Council on Historic Preservation*, 632 F.2d 21, 23 (6<sup>th</sup> Cir. 1980); *Thiokol Corporation v. Department of Treasury*, 987 F.2d 376 (6<sup>th</sup> Cir. 1993).

Section 1985 proscribes conspiracies to deprive persons of their civil rights under the law, and is directed at racial or otherwise protected class-based discriminatory animus behind

the conspirators' actions. *Griffin v. Breckenridge*, 403 U.S. 88, 101-02, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971); *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983). To state a claim under § 1985, the complaint must allege a race or class-based discriminatory animus. *Newell v. Brown*, 981 F.2d 880, 886 (6<sup>th</sup> Cir. 1992). The Plaintiff in the present case has made no such allegation, and therefore any § 1985(3) claim would be subject to dismissal under Rule 12(b)(6), for failure to state a claim on which relief can be granted. Thus, permitting the amended complaint would be futile.

Accordingly, Plaintiff's Motion to Amend Complaint [Docket #26] is DENIED.

SO ORDERED.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: September 28, 2005

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on September 28, 2005.

S/Gina Wilson  
Judicial Assistant